

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

SIRDAREAN ADAMS,

Defendant-Appellant.

UNPUBLISHED

January 6, 2011

No. 287034

Ingham Circuit Court

LC No. 08-000412-AR

ON REMAND

Before: TALBOT, P.J., and MARKEY and O'CONNELL, JJ.

MEMORANDUM.

This matter is once again before this Court on remand from the Michigan Supreme Court.¹ The premise for this remand was the failure to secure appointed counsel for Sirdarean Adams during the pendency of the initial appeal by the prosecutor. Having reviewed our original opinion² and the current briefs and arguments submitted by the parties, we again reverse and remand this matter in accordance with the reasoning set forth in our initial opinion.

We note on remand that Adams has not identified or raised any considerations that this Court failed to take into account in its initial opinion. Adams once again contends that the district court's decision not to bind him over was correct and did not constitute an abuse of discretion. In support of this contention Adams asserts that the identification evidence was "wholly suspect" because it was impeached and, albeit wrongfully, argues that when evidence conflicts or raises a reasonable doubt concerning guilt, a bind over should not occur. Contrary to Adams' position, as discussed by our Supreme Court, the current status of the law provides:

For purposes of preliminary examination, the proofs adduced must only establish probable cause to believe that a crime was committed and probable cause to

¹ *People v Adams*, ___ Mich ___, 788 NW2d 18 (2010).

² *People v Adams*, unpublished opinion per curiam of the Court of appeals, issued November 19, 2009 (Docket No. 287034).

believe that the defendant committed it. . . . Some evidence must be presented regarding each element of the crime or from which those elements may be inferred. It is not, however, the function of the examining magistrate to discharge the accused when the evidence conflicts or raises a reasonable doubt of the defendant's guilt; that is the province of the jury.³

Consistent with the current status of the law, as cited and applied in our previous opinion, we again hold that credibility determinations are within the purview of the trier of fact and should not be resolved for the purpose of determining whether to bind a defendant over for trial. We adopt our earlier opinion, in its entirety, and again reverse the district court's ruling and remand Adams to the circuit court for trial, if this has not already occurred.

Reversed and remanded. We do not retain jurisdiction.

/s/ Michael J. Talbot

/s/ Jane E. Markey

/s/ Peter D. O'Connell

³ *People v Goecke*, 457 Mich 442, 469-470; 579 NW2d 868 (1998), citing *People v Doss*, 406 Mich 90, 103; 276 NW2d 9 (1979).